

OGC 76-7209
16 December 1976

MEMORANDUM FOR: Chief, Regulations Control Branch

FROM

[REDACTED]
Assistant General Counsel

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SUBJECT : Proposed HR [REDACTED] "Protection of Intelligence
Sources and Methods"

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1. We have reviewed the proposed HR [REDACTED] Protection of
Intelligence Sources and Methods, and determined that we should not
concur in the regulation in its present form.

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2. The preparation of this draft regulation has served to
crystallize a number of very important questions which it does not
answer in its present form. Several of these may be within the
purview of the Regulations Control Branch, but most of them are
not. Most will depend upon policy decisions which have yet to
be made and which we believe must be made before it is possible
to promulgate this regulation.

3. We emphasize that this position is not a criticism of
the Regulations Control Branch, or the effort it has put forth.
Most of the major questions outstanding are not questions which
the Branch is in a position to influence or answer.

4. In addition to these larger considerations, there are certain
other editorial changes which we think are needed. We have organized
our comments in two sections, one dealing with major questions, the
other with editorial changes. Within both sections, the comments are
keyed to specific subparagraphs.

a. Major Questions

(1) Subparagraph 9a(2) - This subparagraph indicates
that only those aspects contained in the list require any
protection. Are we prepared to embark upon this as an
official position?

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(2) Subparagraph 9a(2) - Must each employee read the list? If so, does this work to compromise the need-to-know principle? If only some employees need read it, who makes this determination? How frequently must the list be reread?

(3) Subparagraph 9a(3) - How, specifically, are the documents or materials to be marked? Since it is possible that this marking will be used in circumstances where it would represent the only protection available (indeed, such circumstances would represent its most important use), this marking should probably appear on each page, not just on the cover, container, etc.

(4) Subparagraph 9d(1) - This subparagraph deals with the procedure to disclose information once it has become subject to the system of protection. Who is charged with making the determination for incoming data that it does or does not require protection at all?

(5) Subparagraph 9d(1) - In circumstances where the material to be disclosed falls within the areas of responsibility of several authorized releasing offices, whose decision shall prevail, particularly in circumstances where there may be disagreement?

(6) Subparagraph 9g(1) - Believe we must come up with a different warning statement. This statement is very similar to the statement required in certain situations by the National Security Council Directive of 17 May 1972, which implements E.O. 11652. (That statement reads: "Warning Notice -- Sensitive Intelligence Sources and Methods Involved.") Since the two statements are so similar, the basis exists for confusing them.

(7) Subparagraph 9g(1) - For the warning statement which is ultimately chosen, what is the policy as regards abbreviation? What is the official abbreviation? In what circumstances may it be used?

(8) Subparagraph 9h(1) - Who is "the official having responsibility for the information, ...?" The originator? The appropriate Deputy Director? The local supervisor?

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(9) Subparagraph 9j - What is "...the appropriate secrecy agreement?"

(10) Subparagraph 9j - Has the Agency determined, in view of E.O. 11905, whether all employees must execute a new secrecy agreement?

(11) Subparagraph 9j - Is it incumbent upon Agency employees dealing with employees of other organizations and wishing to discuss aspects of intelligence sources and methods to first determine whether that employee has executed an appropriate secrecy agreement? At least some of the agreements used in other organizations do not now make reference to intelligence sources and methods.

(12) Subparagraph 9j - Must the secrecy agreement make reference to the aspect list? If so, should that requirement be reflected in this regulation?

(13) Subparagraph 9j - Would it be useful to require that one's own secrecy agreement become one of the regulatory issuances which must be reread periodically? Should each employee be provided a copy of the secrecy agreement which he or she has signed?

(14) Subparagraph 9k - If an individual is subject to the sanctions provided in the secrecy agreement he or she has signed, does this require that all secrecy agreements contain identical sanctions, in order to avoid charges that equal protection of the law has not been provided?

(15) Subparagraph 9k - Are all secrecy agreements now in force within the Agency sufficiently similar to avoid this charge?

(16) Subparagraph 9m - Are these procedures which are to be specifically approved by the Director of Security yet in existence? If so, where are they found?

b. Editorial Changes

(1) Hq Instruction Sheet - Change the two references to intelligence "services" to read intelligence "sources."

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(2) Subparagraph 9a(1) - Delete the last sentence. In its place, put this sentence: "In addition, Executive Order 11905 directs that the DCI shall take certain steps for the protection of intelligence sources and methods, both within the Agency and elsewhere in the Federal Government."

(3) Subparagraph 9a(3) - Change the last two sentences to read as follows: "The marking is independent of any classification or marking established pursuant to Executive Order 11652 or other authority. Documents and other materials requiring this marking will bear it in addition to any other markings required pursuant to Executive Order 11652 or other authorities."

(4) Subparagraph 9b - Change the first five lines to read: "AUTHORITY. The authority for this paragraph is derived from the responsibility placed upon the Director of Central Intelligence pursuant to Section 102(d)(3) of the National Security Act of 1947, as amended, Section 6 of the Central Intelligence Agency Act of 1949, as amended, Sections 3(d) and 7(d) of Executive Order 11905, the authorities delegated to the Director..."

(5) Subparagraph 9c - Move this subparagraph elsewhere. It interrupts the logical chain of thought flowing from 9b to 9d.

(6) Subparagraph 9f - Line 3 - change "...authority or law..." to read "...authority of law..."

(7) Subparagraph 9g(1) - Change the second sentence to read: "Such marking is independent of any markings required by Executive Order 11652 or other authority."

(8) Subparagraph 9h - Line 3 - change the word "all" to read "both."

(9) Subparagraph 9i - Line 11 - change the word "authority" to read "responsibility."

5. It is the recommendation of this Office that the coordination of this particular regulation be suspended until some action can be taken to resolve the policy issues underlying it. This Office will attempt to initiate this action.

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